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Evaluation Board of Court Experts
Summary

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Summary

Reason for evaluation

Partly as a result of a number of serious court errors in which insufficient quality of forensic expertise played a role, the Expert in Criminal Matters Act (Wds) came into force in 2010. The law has the purpose of contributing to the enhancement of the quality of the input of experts in the administration of justice. The Netherlands Register of Court Experts (hereinafter: NRGD), established with the Wds and which is administered by the Board of Court Experts (hereinafter: Board), has determined to make an important contribution to this objective.

The Board is an independent administrative body. Because the law requires independent administrative bodies to be evaluated every five years, and the last evaluation took place in 2014, the Research and Documentation Centre (WODC) has requested to re-evaluate the NRGD system on behalf of the Ministry of Justice & Security. In this management summary we present the main results of this study.

Research method

The fieldwork for the evaluation took place in the period May 2019 - January 2020. Various research activities were carried out during this period. In the first place, desk research has been carried out on various written sources, and numerical data from the Bureau NRGD have been considered. In addition, a survey was conducted among a representative and stratified sample of 351 experts who are partly enrolled in the NRGD and partly not. Finally, 32 respondents were interviewed, divided among the various stakeholders of the NRGD system. This includes members of the Board, the Bureau NRGD, members of the judiciary, the NFI, the NIFP, Court experts and members of the various review, objection and standardization committees of the NRGD system.

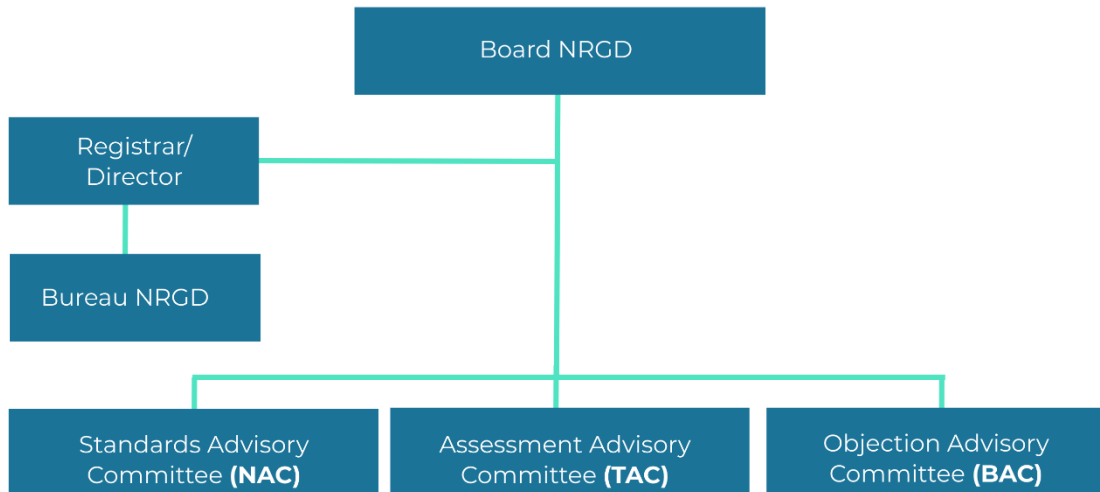
The NRGD system

In order to properly understand the results of the evaluation, it is necessary to take note of the formal structure of the NRGD system. Within this evaluation, the NRGD system is defined as the entirety of bodies, facilities and procedures with which the Board comes to standardize areas of expertise and assess applicants against these standards for admission to the NRGD.

The NRGD system consists of a register in which experts can be enrolled if they meet the criteria established for the relevant field of expertise. There is a Board. The Board has a threefold task: it manages the register, it norms the relevant areas of expertise and tests whether an expert can be admitted to the register on the basis of the standards. When a field of expertise has been standardized by the Board, the

judiciary in principle only appoints experts who are registered in the NRGD for the field of expertise concerned.

In its task, the Board is assisted by various organizational units. These units are summarized in the diagram below:



The NRGD Bureau manages and maintains the register on behalf of the Board. The Bureau also supports the Board in policy preparation, in setting up and supervising the various committees, in communication and logistics processes, in financial management and through legal advice. To determine the common standards for each area of expertise, the Board is advised by the Standards Advisory Committee (NAC) which it sets up itself. The NAC is composed of experts in the relevant field of expertise, supplemented by lawyers and representatives of the Bureau NRGD. For the substantive assessment of the application against the substantive requirements of the specific area of expertise, the Board will be advised by an Assessment Advisory Committee (TAC). The TAC assesses on the basis of recent case reports drawn up by the applicant whether the applicant meets the requirements for registration. The applicant can object to the decision of the Board regarding the registration application. The objection is handled by the Objection Advisory Committee (BAC). After handling the objection, the BAC gives advice to the Board, which ultimately takes a decision on the objection.

Results of the evaluation

The central issue of the evaluation was:

"Did the Board achieve its goals between 2014 and 2019 with regard to (re) standardizing areas of expertise and assessing experts against these standards? How did the Board deal with the points for attention that emerged in the 2014 evaluation?"

This issue has been elaborated in a set of research questions that are divided thematically. This concerns questions about standardization and reformation of areas of expertise, questions about registration and re-

registration in the register, questions about the quality of the NRGD system and the registered experts and questions about goal achievement. In this section we draw the main conclusions for each theme. We start with the theme goal realization because this theme coincides with the central research question.

Conclusions regarding goal achievement of the Board

The following research questions have been answered within the theme **goal realization**:

- ③ How did the Board deal with the points of attention that emerged in the 2014 evaluation regarding the registration?
- ③ What goals had the Board set regarding the processing of (re) registrations in the years 2014 to 2019? What are these goals based on?
- ③ What goals had the Board set regarding the (re) standardization of areas of expertise in the years 2014 to 2019? What are these goals based on?
- ③ To what extent has the Board achieved these goals?
- ③ Has the Board's assessment burden been reduced by accreditation of NFI and NIFP programs?
- ③ How does the Board assess the possibility of conditional registration of newly arrived experts who have just been trained?

The NRGD system was evaluated for the first time in 2014. This evaluation made it clear that the system was functioning properly and that it provided qualitative output in the field of standardization, testing and registration. However, some points of attention were identified in the evaluation, as a result of which the then minister made five recommendations:

- ③ Accreditation of the programs of NFI and NIFP in relation to the assessment burden of NRGD. The Board then formulated the goal of investigating how to reduce the assessment burden as a result of double assessment by accreditation of programs.
- ③ Outline and standardization of part of the areas of scientific expertise that have not yet been included in the register.
- ③ Assuring the quality and findability of both the experts representing small areas of expertise and the highly specialized experts.
- ③ Investments by courts in improving the valuation of expert reports, partly through the appointment of forensic assistants.
- ③ Possibilities to extend the registration period to five years and conditional registration of newly enrolled experts who have just been trained.

In response to the results of the evaluation and in response to the Minister's advice, the Board has set itself several goals and ambitions in the current evaluation period:

- ③ Further development of the certification of the field of expertise Forensic Psychiatry, Forensic Psychology and Forensic Orthopedagogics (FPPO). From 2016, the TBS reports written by them will be included in the assessment for the (re) registration of psychiatrists and psychologists.

- ③ At the end of 2014, all applications from foreign assessors and experts working at providers other than the NFI were processed. This goal is set to enable the possibility of counter-expertise and forensic scientific debate.
- ③ To reduce the administrative burden of the TACs and the Bureau NRGD, the registration period has been extended from four to five years. In theory, this results in a 25% reduction in the administrative burden.
- ③ In order to reduce the administrative burden of the TACs and the Bureau NRGD, step-by-step testing is used, that is to say: if two testers judge at the first reading of the reports that they amply meet the admission criteria, then a positive advice issued. If in any doubt or in case of a negative opinion, it will be scaled up to three reviews.
- ③ Standardizing a new area of expertise, if possible, every year.
- ③ Working towards expansion to administrative and civil law. With this expansion, the NRGD wants to develop into a single register for the entire judiciary.
- ③ The registration requirements of seven areas of expertise were recalibrated and tightened in 2016. It concerns the areas of expertise: DNA source level, handwriting research, narcotics - analysis and interpretation, forensic toxicology, forensic weapons and ammunition research, assessment against the law on weapons and ammunition and forensic pathology.
- ③ Ad hoc experts are occasionally deployed to answer specific questions. Such as the effect of a certain medicine on behaviour. The ad hoc expert is an expert who has never (or very rarely) reported for the administration of justice and whose area of expertise is in principle not forensically oriented. Commissioned by the Minister, the Board has set itself the goal of investigating how the quality of reports from scientists without experience with the law can be guaranteed.

On the basis of the evaluation, it is concluded that the Board has partially succeeded in achieving its goals and ambitions. The area of expertise FPPO has been further developed. From 2016 onwards, the TBS reports written by them - if present - will be included in the assessment for (re) registration of psychiatrists and psychologists for assessment. The Board has also proved successful in attracting foreign experts within the NRGD system. On 31 December 2019, 10 foreign experts were registered in the register in an area of expertise in which the NFI also makes efforts. (An important part of these foreign experts are also members of a NAC and TAC.) Furthermore, the Board has been successful in extending the registration period of an expert in the register from four to five years. As a result, the testing burden has become noticeably lower. The fact that (partial) work is being carried out with a stepped assessment has also contributed to the reduction of the testing burden. It is expected that the burden of testing will decrease further because, as of 1 January 2020, it will be possible for experts who have successfully completed the NIFP training for rapporteur pro-Justitia to be registered conditionally in the NRGD without substantive testing. Although no experience with this new working method could be inventoried within this evaluation, the Board and the other stakeholders involved have a positive assessment of this new possibility.

There was no (full) goal achievement for the other goals and ambitions within the 2014-2019 period examined. This concerns the development of an assessment system for ad hoc experts and the extension of the NRGD system to administrative and civil law. The number of newly standardized areas of expertise was also lower than intended (see also the conclusions regarding (re) standardization).

Conclusions regarding (re) standardization

The following research questions have been answered within the theme of **standardization and re-standardization**:

- ③ Which areas of expertise are included in the register?
- ③ Which areas of expertise have been standardized since 2014?
 - How did the re-standardization process go?
 - to what extent has extra attention been paid to small areas of expertise and areas of scientific expertise?

This yielded the following conclusions for the evaluation. The following areas of expertise were standardized on 31 December 2019:

Table 1. Areas of expertise as of 31 December 2019

Field of expertise	Number of registered experts in NRGD
Forensic Psychology and Forensic Orthopedagogics (FPPO)	508
Digital Forensic Investigation (new since 2016)	27
DNA-analyses and interpretation	25
Psychology of law (new since 2017)	12
Toxicology	9
Forensic Pathology (new since 2015)	8
Drugs	6
Forensic Weapon and Ammunition research	6
Handwriting research	3
Assessment against the law on Weapons and Ammunition	1
Total number of registrations	605

Source: Administration Bureau NRGD

The following areas of expertise from this list have been newly added to the NRGD since 2014: forensic pathology (in 2015), digital forensic research (in 2016) and legal psychology (in 2017). Two of these three new areas of expertise are small in number of registrations: the field of forensic pathology has eight experts on 31 December 2019 and the field of expertise of legal psychology has 12 experts. On December 31 2019, digital forensic investigations with 27 registered experts are almost as large as the field of expertise of DNA analysis and interpretation.

By adding three new areas of expertise to the NRGD system, the Board has not achieved its objective of one field of expertise per year. On the part of the Bureau NRGD, an explanation for the lagging behind on this objective is the fact that no budget expansion has taken place in the past period, while the number of areas of expertise has increased. Just like the amount of work involved. Moreover, the Board and the NRGD Bureau are increasingly involved in other quality improvement processes, such as those with the NIFP programs or coordination with the NFI.

In the near future, the Board itself aims to standardize DNA at the activity level, expertise in the area of shot remnants and forensic accountancy. In addition to these areas, other stakeholders indicate a need to standardize fire expertise, traffic accident expertise and various areas of forensic medicine.

The way in which areas of expertise are standardized has proven effective in practice. The full breadth of the interviewed parties is considered to have broad support for the standards set by the Board for each field of expertise. They are a good reflection of what is generally accepted in the field of expertise concerned. No structural reform of already standardized areas of expertise took place during the period examined. Certain standards and procedures in certain areas of expertise have been tightened up in the meantime.

Conclusions regarding (re) registration

The following research questions were central to the theme of **registration and re-registration**:

- ③ How many experts are registered?
- ③ How often is registration or re-registration refused?
- ③ What are the reasons for refusing experts?
- ③ If applicable: what are the reasons for cancellation of the entry in the register?

The number of experts admitted to the NRGD has increased slightly since 2014 from 529 (in 2014) to 605 (in 2019). Just over half of the increase in 76 experts is due to the standardization of new areas of expertise, for which 47 new experts have been admitted. As in 2014, the vast majority (508 = 84%) are experts in the field of the FPPO. With the exception of DNA analysis and interpretation and Digital Forensic Investigation, the other areas of expertise have ten or fewer enrollees. Often only very limited numbers of experts are involved.

The number of applications that are rejected by the Board on the advice of the TAC is relatively limited. For applications for provisional admission, the rejection rate varies between 1% (in 2017) and 6% (in 2018 and 2019). The rejection rate on re-registrations fluctuates between 4% (in 2019) and 11% (in 2016) in the period examined. The reason for refusing experts is, without exception, that applicants do not meet the admission standards applicable to the field of expertise concerned. A limited number of rejected applicants object to the BAC's decision. In one out of six cases, the BAC judges differently than the TAC and still gives a positive advice for admission to the register.

The assessment procedure for the initial application and the application for re-registration is assessed as "thorough" by both experts themselves and by the TAC members. The expertise of the TAC members is also generally assessed well.

Removal from the register took place only once during the period examined. There are two reasons for this. In the first place, there is no statutory investigative power, as a result of which the Board cannot request all necessary information. Secondly, the Board does not want to function as a disciplinary committee. The evaluation did not, however, provide any indications that the problem of dysfunctional experts is significant.

The evaluation shows that approximately one third of the initial applicants are admitted to the register under certain conditions. This provision consists in giving a candidate time to correct certain minor imperfections within a given period. For example, this concerns matters such as peer reviews or peer review activities. TAC members see conditional admission as a useful provision in the current system. This conditional admission can then be used to report (under supervision or otherwise), so that the conditions are still met within the set period.

Conclusions regarding the quality

The following questions were answered within the theme of **quality**:

- ③ In how many cases were experts consulted in the past five years who were not on the register?
 - What was the reason for this? Are these still registered at a later stage?
- ③ Has the quality of the experts and their products increased since registration?
 - Is it possible to make a statement about this?
 - If not, what does it take to be able to do that?
- ③ Has the Board's assessment burden been reduced by accreditation of NFI and NIFP programs?
- ③ To what extent do courts work with forensic employees?
 - How does this affect the valuation of expertise reports?

During the evaluation, a distinction was made between the quality of the NRGD system and the quality of the experts registered in the register. The term "quality" has not been elaborated within this evaluation,

but has been left to the expert opinion of participants in the study. With regard to the quality of the NRGD system, stakeholders consider two aspects to be particularly important: the independence and objectivity of the standardization and assessment process and the expertise of the members of the various committees.

NRGD system

The evaluation shows that across the full spectrum of the surveyed parties (including the registered experts themselves), it is judged that the NRGD system functions objectively and independently. It is also pointed out that the standards used in the admission test are well derived from the state-of-the-art insights in science and that the members of the various assessment advisory committees have the appropriate expertise.

To guarantee independence, the Board has ensured that foreign assessors are deployed in small areas of expertise in which the Dutch experts almost all know each other. This is believed to benefit independence. But not necessarily the quality of the assessment, because foreign experts sometimes have insufficient knowledge of the Dutch legal context and reports that need to be translated. Independence and quality seem to bite each other.

Experts

The quality of the registered experts is also positively assessed. The NRGD system guarantees that certain minimum requirements are met and during court hearings there is hardly any discussion about whether an NRGD expert has the appropriate expertise. In itself a positive fact, but it should be noted that the judge still has the obligation to assess the quality of the expert at all times. The Board also draws attention to this.

Most judges, prosecutors, forensic assistants and lawyers have seen the quality of forensic expertise improve during the period of research. Especially in the specific technical fields, reports have become more accessible and experts are better able to stay within their area of expertise. Whether this improvement can (solely) be attributed to the NRGD system is difficult to say. The interviewees point to flanking developments in criminal proceedings that may have contributed to this progress. One of these developments concerns forensic employees (in Dutch: forensische medewerkers) who are deployed by an increasing number of courts. The task of forensic staff is to help (investigative) judges and clerks understand forensic reports in the field of science and support them in how these reports can be used for judgment. Judges and the Board itself are positive about this relatively new function within the criminal trial. They point out that the information from forensic reports can be better assessed with the input of forensic employees. Others have reservations about this function by pointing out that while they play an important role and influence in criminal proceedings, they remain out of the picture for prosecution and defence.

This does not alter the fact that no quality improvement has been observed in the area of the FPPO, which is by far the largest field of expertise. Several parties note that despite NRGD registration, there are sometimes considerable differences in quality between reports and experts. In addition, the problems concerning the availability of *rapporteurs pro-Justitia* in the field of the FPPO are pointed out. The lack of sufficient rapporteurs means that a report is sometimes not published or is only released very late and that the quality sometimes suffers under time pressure.

NRGD-registered experts may be asked to conduct counter-investigations on an investigation previously brought before the judiciary. However, not all experts - particularly in the field of the FPPO - seem to want this in practice. The research says from various sides that conducting counter-investigation in the area of the FPPO would be detrimental to the image of the independent expert. Nevertheless, the evaluation shows that there is no shortage of counter-experts in this field. Indeed, it is clear from the survey of experts that approximately one fifth of FPPO experts would like to carry out counter-investigations upon request. The problem is that there is a mismatch between supply and demand. This is caused by the fact that the register does not keep track of whether someone is available for counter-expertise.

Only in a few small areas of expertise there are no real candidates for counter-expertise in the NRGD. The reason for this is that these areas of expertise in the Netherlands only have experts who work at the NFI. It needs little explanation that it is not obvious that an NFI expert should conduct counter-investigations into the work of a close colleague. At the same time, however, it also appears that for these areas of expertise experts outside the NRGD register are available for counter-research (including various academics).

With regard to the use of non-registered experts, the evaluation makes clear that this differs per field of expertise. In the field of FPPO hardly any work is done with unregistered persons. While in the field of areas of scientific expertise, relatively more people work with unregistered persons. An important part of the NFI employees and various academics are not registered. There seems to be little incentive for these experts to still be registered because their quality within the judiciary is not under discussion and judges nor prosecutors see added value in a possible additional registration in the NRGD. This is different for unknown experts who are presented by the defence as experts (whether or not in the context of counter-investigation).

The general impression within the judiciary is that the use of unregistered experts is decreasing. The defence also increasingly prefers to use the NRGD register when deploying experts.

To conclude

The evaluation shows that the NRGD has made an important contribution to the goal of the Criminal Expert Act to strengthen confidence in the judiciary by realizing quality improvements in forensic advice. It has made this contribution by standardizing various areas of expertise and setting up a register in which only experts are registered who meet the standards set by the Board for the relevant field. Finally, the research raises the question whether the current pattern of standardization and registration is suitable for the very small areas of expertise. Perhaps it is better to work with other quality assurance systems in certain fields from the point of view of efficiency.

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Onze inzet is vooral gericht op het ondersteunen van opdrachtgevers bij het aanpakken van complexe beleidsvraagstukken binnen de samenleving. We richten ons daarbij met name op de sociale, ruimtelijke of bestuurlijke kanten van zo'n vraagstuk. In dit kader kunnen we bijvoorbeeld een onderzoek doen, een registratie- of monitorsysteem ontwikkelen, een advies uitbrengen, een beleidsvisie voorbereiden, een plan toetsen of (tijdelijk) het management van een project of organisatie voeren.

Expertise

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